IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No.183/2006

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Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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**CORAM :** A.P. Lavande, J.
**Dated : 21.4.2007.**

By this appeal, the appellants take exception to the judgment and decree dated 17.6.2005 passed by First Adhoc Additional District Judge, Chandrapur in Regular Civil Appeal No.196/2005 dismissing the appeal filed by the appellants against the judgment and decree dated 21.8.1992 passed by Civil Judge, Sr. Dn. Chandrapur in Regular Civil Suit No.111/1974.

Heard Mr. Dharmadhikari, learned counsel for the appellants.

The appellants are the legal representatives of the original original plaintiff Dadaji who filed the above suit for partition, separate possession and

injunction against parents and defendant nos. 3 to 6 to whom some properties were transferred in 1967 and 1974. The suit was contested. The trial Court, upon appreciation of the evidence led by the parties, held that the properties were not ancestral property but self-acquired properties to original defendant no.1. Consequently, the suit was dismissed. The appeal against the said judgment and decree was also dismissed up-holding the finding given by the trial Court.

Mr. Dharmadhikari, learned counsel appearing for the appellants submitted that both the Courts below have not considered documentary and oral evidence in proper perspective and have erred in rendering the finding of suit properties and self-acquired properties of original defendant no.1. He further submitted that initially defendants 1 and 2 had admitted the claim of the plaintiffs and, therefore, the trial Court ought to have passed a decree in favour of the

plaintiffs. According to learned counsel, relevant documents have not been properly considered by both the Courts below thereby rendering findings, which are contrary to the evidence on record. In support of his submissions, learned counsel relied upon the judgment of the Apex Court in (2006) SCCR 541 (Hero Vinoth (Minor) Vs. Seshammal.

Having considered the submissions made by learned counsel for the appellant and having perused the records, I find no merit in the present appeal. The finding given by the trial Court that the suit properties were self-acquired properties of original defendant no.1 is a finding recorded upon proper appreciation of the evidence led by the parties and, therefore, cannot be said to be perverse. Insofar as the argument made by learned counsel that the defendants 1 and 2 initially admitted the claim of the plaintiff, and therefore, decree ought to have been passed in favour of the plaintiff, is

concerned, I find no merit in the said submission. It is pertinent to note that the defendant no.1 had transferred some properties in favour of defendants 3 to 6 for valuable consideration and, therefore, in the present case decree could not have been passed on the alleged admission of defendant nos.1 and 2. In any event the trial Court did not act upon the alleged admission and permitted the parties to lead evidence. I do not find any illegal approach of the trial Court in this respect. Moreover, it is pertinent to note that original plaintiff did not challenge alienation made by defendant no.2 in favour of defendant nos. 3 to 6 are and as such in the absence of any such challenge, decree for partition, possession and injunction could not have been granted. This is an additional ground to hold that the appellants are not entitled to any relief in this appeal. The ratio laid down in the judgment cited by the learned counsel for the appellants is not applicable in the present case.

For the reasons aforesaid, I do not find any merit in this appeal. Hence, the second appeal is summarily rejected.

JUDGE A.